

Response under 37 C.F.R. 1.116  
Masaakira HORINO

U.S. Patent Application Serial No. 09/895,328  
Attorney Docket No. 010830

**REMARKS**

Claims 2-14 are pending in this application. Claims 2-14 are rejected. Claims 2, 5, 8-11, 13 and 14 are herein amended.

**Specification**

The prior replacement abstract of the disclosure is objected to because it does not begin on a separate sheet.

Applicant submits herewith the replacement abstract on a separate sheet.

**Claim Objections**

Claim 5 is objected to because the parenthesis in line 8 is unnecessary and if the term “materials” is read with another “s” it would be confusing. Applicant herein deletes the “s(s)”.

Claim 9 is objected to because it depends from a previously canceled claim.

Applicant herein amends this claim to no longer depend on claim 1.

**Rejection under 35 U.S.C. §112, second paragraph**

Claim 8 is vague and indefinite because it appears to be an incomplete sentence. It is unclear how “said substance” can contain “a scale shape, a plate shape or a bar shape.”

Applicant herein adopts the Examiner’s interpretation of the claim, which is “The powder as defined in claim 2, wherein said substance is in the shape of a scale, a plate, or a bar.”

Claim 10 is vague and indefinite because it is unclear what the percentages as claimed are based upon.

Applicant herein adopts the Examiner's interpretation of the claim, which is "The powder as defined in claim 2, wherein said powder comprises 2 to 50 wt% of hydroxyapatite and 2 to 8 wt% of zinc oxide based on the total weight of the powder."

Claim 11 is confusing because it does not follow standard English format.

Applicant herein adopts the Examiner's suggestion of, "A cosmetic composition comprising the powder as defined in any one of claims 2 to 4."

Claim 13 is confusing because both hydroxyapatite and zinc oxide are known sebum-absorbing agents, thus reading claim 13 as broadly as possible, this claim fails to further limit the subject matter of the claims from which it depends.

Applicant herein adopts the Examiner's interpretation of the claim, which is "A sebum-absorbing composition comprising the powder as defined in claim 2 or 4".

Claim 14 is confusing because both hydroxyapatite and zinc oxide are known body deodorants, thus reading claim 14 as broadly as possible this claim fails to further limit the subject matter of the claims from which it depends.

Applicant herein adopts the Examiner's interpretation of the claim, which is "A body deodorant composition comprising the powder as defined in claim 2 or 4".

**Rejections under 35 U.S.C. §103(a)**

The Examiner asserts that instant claim 2 only requires a powder composition comprising a base substance, hydroxyapatite coated on the surface of said substance, and a zinc oxide fixed to the coating layer of hydroxyapatite. This claim does not require that the hydroxyapatite be layered directly on the core powder and that the zinc be directly layered on the hydroxyapatite. Moreover, reading this claim as broadly as possible, this claim reads on a dispersion of a base powder and zinc bound hydroxyapatite, wherein the individual compounds are in contact with one another.

Applicant herein amends claim 2 to more clearly recite that there is a core and subsequent layers on the core; i.e., “A powder comprising a base core substance usable as a powder for cosmetics, a hydroxyapatite coated layer on the surface of said substance core, and a zinc oxide layer on fixed to the coating layer of said hydroxyapatite.”

The claimed invention is directed to a powder of particle wherein a hydroxyapatite is layered on a surface of the base core substance particle as a first layer and zinc oxide is layered on the surface of the layer of such hydroxyapatite as a second layer. This exact construction of a particle is neither disclosed nor suggested in the cited references. Therefore, Applicant submits that the present amendment has overcome the rejection, and respectfully requests that the rejection be withdrawn.

*uncorrected copy*

Applicant notes that Nakane et al. does not teach or suggest a hydroxyapatite layered on the surface of the base core substance particle and the zinc oxide layered on the surface of the hydroxyapatite layer.

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*Claims 2-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nakane et al. as applied to claims 2-6 and 9-14 above, and further in view of U.S. Patent No. 6,004,584 to Peterson et al. Claims 2-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nakane et al. as applied to claims 2-6 and 9-14 above, and further in view of JP 11-140819 to Kaji et al.*

The Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the resin treated hydroxyapatite cosmetic powders of Nakane et al. by using the tabular-shaped hydroxyapatite and covering the hydroxyapatite powders as taught by Kaji et al., to form powders comprising resins substantially covered with tabular hydroxyapatite and then said tabular hydroxyapatite being covered by zinc oxide to deliver powdered compositions with better spread and adhesion.

Applicant respectfully disagrees with this rejection, and notes that with the amendment of claim 2, there is no longer a teaching or suggestion of the claimed invention; i.e., to have the particular arrangement of the powder comprising a base core substance, a hydroxyapatite coated layer on the surface of said substance core, and a zinc oxide layer on fixed to the coating layer of said hydroxyapatite. Therefore, Applicant submits that this amendment overcomes the Examiner's rejections of the claims under 35 U.S.C. §103(a).

For at least the above reasons, Applicant respectfully asserts that the present amendment obviates the objections to the specification and claims and overcomes the rejections of record to the claims.

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If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees that may be due with respect to this paper to Deposit Account No. 01-2340.

Respectfully submitted,

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Enclosures: Version with markings to show changes made  
Replacement Abstract

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**  
**Serial No. 09/895,328**

**IN THE CLAIMS:**

Please amend claims 2, 5, 8-11, 13 and 14 as follows:

2. (Amended) A powder comprising a base core substance usable as a powder for cosmetics, a hydroxyapatite ~~coated layer~~ on the surface of said substance core, and a zinc oxide ~~layer on fixed to the coating layer of~~ said hydroxyapatite.

5. (Twice amended) The powder as defined in claim 2, wherein said substance contains an inorganic powder and contains any one of

a clay mineral,

a synthetic clay mineral,

a metal hydroxide,

a metal oxide,

a composite material thereof, and

composite materials(s) material of one or more of these inorganic powders with an organic powder.

8. (Twice amended) The powder as defined in claim 2, wherein said substance contains is in the shape of a scale shape, a plate shape or a bar shape.

9. (Amended) The powder as defined in claim 1 or 2, wherein the mean particle size of said substance is 0.1 to 600  $\mu\text{m}$  and the mean particle size of said zinc oxide is 0.01 to 1  $\mu\text{m}$ .

10. (Twice amended) The powder as defined in claim 2, containing wherein said powder comprises 2 to 50 wt% of hydroxyapatite and 2 to 8 wt% of zinc oxide based on the total weight of substance, including hydroxyapatite and zinc oxide the powder.

11. (Twice amended) A cosmetics cosmetic composition comprising the powder as defined in any one of claims 2 3 to 4.

13. (Twice amended) A sebum-adsorbent agent composition comprising the powder as defined in claim 2 or 4.

14. (Twice amended) A body deodorant composition comprising the powder as defined in claim 2 or 4 any one of claims 2 to 4.